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2008 JUL 25 PM 12:30  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

Attorneys for Defendants  
UNITED PARCEL SERVICE, INC.; UPS GROUND  
FREIGHT, INC.; and OVERNITE CORPORATION

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

ODW  
(CW/x)

JAIME CASTRO and REYES  
ALVAREZ as individuals and on  
behalf of all other similarly situated,

Plaintiffs,

vs.

UPS GROUND FREIGHT, INC., a  
corporation; UNITED PARCEL  
SERVICE, INC., a corporation;  
OVERNITE CORP., a corporation;  
and DOES 1 through 20, inclusive,

Defendants.

Case No. **CV08-04898**

**NOTICE OF REMOVAL OF CIVIL  
ACTION**

Los Angeles Superior Court Case  
No. BC393239

1 TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT  
2 COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, PLAINTIFFS  
3 JAIME CASTRO AND REYES ALVAREZ, AND TO THEIR ATTORNEYS OF  
4 RECORD:

5  
6 PLEASE TAKE NOTICE THAT Defendants United Parcel Service,  
7 Inc., UPS Ground Freight, Inc., and Overnite Corporation ("Defendants") hereby  
8 remove this action from the Superior Court of the State California for the County of  
9 Los Angeles to the United States District Court for the Central District of  
10 California. This removal is based on diversity of citizenship, pursuant to 28 U.S.C.  
11 sections 1332 (as amended by the Class Action Fairness Act of 2005, Pub. L. 109-  
12 2, § 4(a), 119 Stat. 9), and 1441(a) and (b), for the reasons stated below:

13  
14 1. On or about June 24, 2008, plaintiffs Jaime Castro and Reyes  
15 Alvarez ("Plaintiffs") filed a Complaint in the Superior Court of the State of  
16 California for the County of Los Angeles entitled: "*Jaime Castro and Reyes*  
17 *Alvarez as individuals and on behalf of all others similarly situated, Plaintiffs v.*  
18 *UPS Ground Freight, Inc., a corporation; United Parcel Service, Inc., a*  
19 *corporation; Overnite Corp., a corporation; and Does 1 through 20, inclusive,*  
20 *Defendants,*" designated as Case No. BC393239 (the "Action"). True copies of the  
21 complaint Plaintiffs filed in the Action (the "Complaint"), the summons issued on  
22 the Complaint, and other papers served on Defendants in the Superior Court are  
23 attached as Exhibit 1 to the Declaration of Elizabeth A. Falcone ("Falcone Decl."),  
24 filed with these removal papers. The allegations of the Complaint are incorporated  
25 into this notice by reference without necessarily admitting the truth of any of them.

26  
27 2. On June 26, 2008, all Defendants were served with process in  
28 the Action. Falcone Decl. ¶ 2. Defendants Does 1 through 20 are unnamed and

1 unknown, and, therefore, have not been served with the Complaint. Complaint  
2 ¶ 12.

3  
4 3. On July 23, 2008, Defendants filed their Answer to the  
5 Complaint in the Superior Court for the County of Los Angeles. Falcone Decl. ¶ 3,  
6 Exh. 2.

7  
8 4. This Notice of Removal is being filed within thirty (30) days  
9 after receipt by Defendants of a copy of the initial pleading setting forth the claim  
10 for relief upon which this Action is based, and is timely filed pursuant to 28 U.S.C.  
11 section 1446(b).

12  
13  
14 5. In accordance with 28 U.S.C. section 1446(d), Defendants will,  
15 promptly after filing the Notice of Removal, give written notice of the removal to  
16 the adverse parties and will file a copy of this Notice of Removal with the Clerk of  
17 the Court of the Superior Court of the State of California for the County of Los  
18 Angeles. Copies of these Notices are attached as Exhibits 3 and 4, respectively, to  
19 the Falcone Declaration. Proof of service of the Notice to Superior Court of  
20 Removal to Federal Court and of the Notice to Adverse Parties of Removal to  
21 Federal Court will be filed with this Court immediately after the Superior Court  
22 filing is accomplished. Falcone Decl. ¶ 4.

23  
24  
25 6. Venue of this Action is properly laid in this District pursuant to  
26 28 U.S.C. section 1441(a) because the Superior Court is located within this District.

1           7.     This Action is one over which this Court has original  
2 jurisdiction under the provisions of 28 U.S.C. section 1332, and may be removed to  
3 this Court pursuant to 28 U.S.C. sections 1441(a) and (b) pursuant to the rules for  
4 diversity of citizenship jurisdiction under the Class Action Fairness Act of 2005,  
5 Pub. L. 109-2, § 4(a), 119 Stat. 9.

6  
7  
8           8.     The Class Action Fairness Act of 2005 amended 28 U.S.C.  
9 section 1332 to provide that a putative class action is removable to federal court if  
10 (a) the proposed class members number at least 100; (b) the amount in controversy  
11 exceeds \$5,000,000, exclusive of interest and costs; and (c) any member of a class  
12 of plaintiffs is a citizen of a state different from any defendant. Each of these  
13 requirements is met here, as outlined below.

14  
15  
16           9.     Plaintiffs admit that the number of proposed class members in  
17 this case exceeds 100. Plaintiffs propose to represent two classes of “less-than-  
18 truckload” drivers allegedly employed by Defendants in the state of California  
19 between June 23, 2004, and the present, excluding “linehaul” “less-than-truckload”  
20 drivers and unionized “less-than-truckload” drivers.<sup>1</sup> They allege that the class  
21 contains over 200 class members. *See* Complaint ¶ 20 (“Plaintiffs allege that there  
22 are more than 200 current and former Class Members”). In fact, UPS Ground  
23 Freight, Inc. employed more than 500 local drivers as of April 6, 2008. *See*  
24 Declaration of John Hampton (hereafter, “Hampton Decl.”) ¶ 4. Accordingly, there  
25 are at least 500 people in the proposed class, if not more.

26  
27  
28           <sup>1</sup> Defendants here use the term “local drivers” to refer to “less-than-truckload” drivers who  
are not “linehaul” drivers.

1                   10. At least one plaintiff and one defendant are citizens of different  
2 states:

3  
4  
5                   (a) Defendants are informed and believe (in part based on the  
6 fact that each of them was employed by UPS Ground Freight, Inc. in the State of  
7 California) that at the time this Action was commenced, Plaintiffs were citizens of  
8 the State of California within the meaning of 28 U.S.C. section 1332(a). *See*  
9 Complaint ¶¶ 8 & 9.

10  
11  
12                   (b) Defendant United Parcel Service, Inc. is now, and was at  
13 the time this action was commenced, a citizen of the States of Delaware and  
14 Georgia within the meaning of 28 U.S.C. section 1332(c)(1), because it is now and  
15 was at all material times incorporated under the laws of the State of Delaware, and  
16 maintains, and at all material times maintained, its principal place of business in the  
17 State of Georgia. Declaration of Ryan C. Swift ("Swift Decl.") ¶ 3.

18  
19  
20                   (c) Defendant Overnite Corporation is now, and was at the  
21 time this action was commenced, a citizen of the State of Virginia within the  
22 meaning of 28 U.S.C. section 1332(c)(1), because it was incorporated under the  
23 laws of the State of Virginia, and maintained its principal place of business in the  
24 State of Virginia. Swift Decl. ¶ 4.

25  
26  
27                   (d) Defendant UPS Ground Freight, Inc. is now, and was at  
28 the time this action was commenced, a citizen of the State of Virginia within the

1 meaning of 28 U.S.C. section 1332(c)(1), because it is now and was at all material  
2 times incorporated under the laws of the State of Virginia, and maintains, and at all  
3 material times maintained, its principal place of business in the State of Virginia.  
4 Swift Decl. ¶ 5.

5  
6  
7 (e) The presence of Doe defendants has no bearing on  
8 diversity with respect to removal. *See* 28 U.S.C. § 1441(a) (“For the purposes of  
9 removal under this Chapter, the citizenship of defendants sued under a fictitious  
10 name shall be disregarded.”).

11  
12  
13 11. Defendants are informed and believe, and on that basis allege  
14 without admitting, that the amount in controversy in this Action exceeds  
15 \$5,000,000, exclusive of interest and costs, on the following grounds:

16  
17  
18 (a) In the Complaint, Plaintiffs allege, among other things,  
19 that Defendants had a systematic practice of “automatically and uniformly as a  
20 matter of corporate policy deducting ½ hours of time for each workday” that a local  
21 driver worked more than six hours. *See* Complaint ¶¶ 19(1), 34. Plaintiffs thus  
22 claim that each class member is owed an additional half hour’s wages for every day  
23 on which she or he worked more than six hours.

24  
25  
26 (b) Defendant UPS Ground Freight, Inc. employed more than  
27 500 full-time local drivers as of April 6, 2008; the full-time local drivers earned  
28 anywhere from \$18.27 per hour to \$21.80 per hour. *See* Hampton Decl. ¶ 5. The



1 midpoint of the hourly rate of local drivers thus was \$20.03 per hour. *Id.*  
2 Assuming that Plaintiffs' allegations are true, and that each local driver might be  
3 owed a half hour's wages for every work day for the past four years, and assuming  
4 that each local driver worked 260 days per year, the potential damages per local  
5 driver that Plaintiffs seek may be estimated at \$10,015 (\$20.03 per hour x .5 hours  
6 x 250 work days per year x four years = \$10,015). Given that there were at least  
7 500 local drivers as of April 6, 2008, Plaintiffs seek at least \$5,007,500 estimated  
8 damages for this subset of the purported class, which is in excess of the \$5,000,000  
9 jurisdictional prerequisite.

10  
11  
12 (c) This analysis looks at only one of the four causes of  
13 action alleged by Plaintiffs. Plaintiffs seek further damages and penalties on behalf  
14 of all local drivers who allegedly were terminated by Defendants and were not paid  
15 all monies owed on termination. *See* Complaint ¶¶ 19(2) and 37-42. Plaintiffs also  
16 seek attorneys' fees. *See* Prayer for Relief ¶¶ 8 & 9. Therefore, there is no question  
17 that the amount in controversy in this Action exceeds \$5,000,000.

18  
19  
20 (d) In setting forth these calculations, Defendants do not  
21 admit that they failed to pay any wages or monies owed to the putative class  
22 members or that they failed to pay all wages owed on termination; in fact,  
23 Defendants deny that they are liable to Plaintiffs and their proposed classes in any  
24 amount.

1           12. Therefore the amount in controversy required to establish  
2 compliance with the Class Action Fairness Act of 2005 is satisfied and the Action  
3 may be removed to this Court on grounds of diversity of citizenship jurisdiction.  
4

5           WHEREFORE, Defendants remove the above-entitled action now  
6 pending in the Superior Court of the State of California for the County of Los  
7 Angeles to this Court.

8  
9 DATED: July 24, 2008

PAUL, HASTINGS, JANOFSKY & WALKER  
LLP  
JENNIFER S. BALDOCCHI  
ELIZABETH A. FALCONE  
JENNIFER A. AWREY

10  
11  
12 By: Elizabeth A. Falcone  
13 ELIZABETH A. FALCONE

14 ATTORNEYS FOR DEFENDANTS  
15 UNITED PARCEL SERVICE, INC.; UPS  
16 GROUND FREIGHT, INC.; and  
OVERNITE CORPORATION

17 LEGAL\_US\_W # 59516519.3  
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28



# SUMMONS (CITACION JUDICIAL)

SUM-100

## NOTICE TO DEFENDANT:

## (AVISO AL DEMANDADO):

UPS GROUND FREIGHT, INC., a corporation; UNITED PARCEL SERVICE, INC., a corporation; OVERNITE CORP., a corporation; and DOES 1 through 20, inclusive

## YOU ARE BEING SUED BY PLAINTIFF:

## (LO ESTÁ DEMANDANDO EL DEMANDANTE):

JAIME CASTRO and REYES ALVAREZ as individuals and on behalf of all others similarly situated

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

JUN 24 2008

John A. Clarke, Executive Officer/Clerk

BY MARY GARCIA, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):  
Superior Court of California  
111 N. Hill Street  
Los Angeles, CA 90012  
Central District

CASE NUMBER:  
(Número del Caso):

BC393239

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Larry W. Lee (SBN 228175) (213) 488-6555 (213) 488-6554  
Diversity Law Group  
444 S. Flower Street, Suite 1370  
Los Angeles, CA 90007

DATE: JUN 24 2008

(Fecha)

CLERK

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (Form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

M. GARCIA

## NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify):

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

- ☐ by personal delivery on (date):

(SEAL)

**SUMMONS**  
(CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT:**  
(AVISO AL DEMANDADO):

UPS GROUND FREIGHT, INC., a corporation; UNITED PARCEL SERVICE, INC., a corporation; OVERNITE CORP., a corporation; and DOES 1 through 20, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:**  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

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CASE NUMBER:  
(Número del Caso):

BC393239

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(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Larry W. Lee (SBN 228175) (213) 488-6555 (213) 488-6554  
Diversity Law Group

444 S. Flower Street, Suite 1370  
Los Angeles, CA 90071

DATE: JUN 24 2008  
(Fecha)

John A. Clarke, CLERK

Deputy  
(Adjunto)

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M. GARCIA

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1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

UPS Ground Freight, Inc., a corporation

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

Page 1 of 1

**SUMMONS  
(CITACION JUDICIAL)**

SUM-100

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BY MARY GARCIA, Deputy

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Central District

CASE NUMBER:  
(Número del Caso):

BC393239

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Larry W. Lee (SBN 228175)

(213) 488-6555 (213) 488-6554

Diversity Law Group  
444 S. Flower Street, Suite 1370  
Los Angeles, CA 90071

DATE:

JUN 24 2008

(Fecha)

CLERK

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010)).

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

M. GARCIA

(SEAL)

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): *overnite corp., a corporation*

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):



**FILED**  
LOS ANGELES SUPERIOR COURT

JUN 24 2008

JOHN A. CLARKE, CLERK  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

BC393239

JAIME CASTRO and REYES ALVAREZ  
as individuals and on behalf of all others  
similarly situated,

Case No.:

**CLASS ACTION**

Plaintiffs:

vs.

UPS GROUND FREIGHT, INC., a  
corporation; UNITED PARCEL SERVICE,  
INC., a corporation; OVERNITE CORP., a  
corporation; and DOES 1 through 20,  
inclusive,

Defendants.

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:**

(1) VIOLATION OF LABOR CODE  
201-204;

(2) VIOLATION OF LABOR CODE  
227.3;

(2) VIOLATION OF LABOR CODE

CT/CASE: BC393239 LEA/DEF#:  
RECEIPT # - 68478057837  
DATE PAID: 06/24/08 02:51:11 PM  
PAYMENT: \$328200  
RECEIVED: 328200  
CHECK: 328200  
CASH: 328200  
CHANGE: 328200  
CARD: 328200

226;

(4) **UNFAIR BUSINESS PRACTICES**  
 (Violation of California Business &  
 Professions Code §17200 et seq.).

**DEMAND FOR JURY TRIAL**

Plaintiffs Jaime Castro and Reyes Alvarez (hereinafter referred to as "Plaintiffs"), hereby submit their Class Action Complaint against Defendants UPS GROUND FREIGHT, INC., UNITED PARCEL SERVICE, INC., OVERNITE CORP., and Does 1-20 (hereinafter collectively referred to as "DEFENDANTS") on behalf of themselves and the class of all others similarly situated current and former employees of DEFENDANTS for regular time wages owed, vacation wages, waiting time penalties, and penalties or damages for failure to furnish and/or keep accurate records, and for interest, costs, and attorneys' fees as follows:

**INTRODUCTION**

1. This class action is within the Court's jurisdiction under California Labor Code §§ 201-204, 226, 227.3 and California Business and Professions Code § 17200, et seq., (Unfair Practices Act).

2. This complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code and Business and Professions Code against employees of DEFENDANTS.

3. Plaintiffs are informed and believe and based thereon allege DEFENDANTS, jointly and severally have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees in receiving all regular time wages, vacation wages, waiting time penalties, and in connection with DEFENDANTS' failure to furnish and/or keep accurate payroll records of Plaintiffs and Class Members.

4. Plaintiffs are informed and believe and based thereon allege DEFENDANTS have engaged in, among other things a system of willful violations of the California Labor Code, Business and Professions Code and applicable IWC wage orders by creating and maintaining

1 policies, practices and customs that knowingly deny employees the above stated rights and  
2 benefits.

3 5. The policies, practices and customs of defendants described above and below have  
4 resulted in unjust enrichment of DEFENDANTS and an unfair business advantage over  
5 businesses that routinely adhere to the strictures of the California Labor Code, Business and  
6 Professions Code.

#### 7 JURISDICTION AND VENUE

8 6. The Court has jurisdiction over the violations of the California Labor Code §§ 201-  
9 204, 226, 227.3, and California Business and Professions Code § 17200, et seq., (Unfair  
10 Practices Act).

11 7. Venue is proper because the DEFENDANTS do business in Los Angeles County and  
12 the acts alleged herein took place in Los Angeles County.

#### 13 PARTIES

14 8. Plaintiff JIMMY CASTRO was employed by DEFENDANTS from on or about 2001  
15 to on or about September 2007 and has resided within the jurisdiction of this Court at all relevant  
16 times. Plaintiff CASTRO was a non-exempt hourly employee of DEFENDANTS who engaged  
17 in delivery work wholly inside of California state lines. Plaintiff CASTRO and other "less than  
18 truck load" ("LTL") drivers similarly employed as him by DEFENDANTS did not cross state  
19 lines and delivered products entirely within California's boundaries.

20 9. Plaintiff REYES ALVAREZ was employed by DEFENDANTS from on or about  
21 April 2003 to on or about September 2007 and has resided within the jurisdiction of this Court at  
22 all relevant times. Plaintiff ALVAREZ was a non-exempt hourly employee of DEFENDANTS  
23 who engaged in delivery work wholly inside of California state lines. Plaintiff ALVAREZ and  
24 other "LTL" drivers similarly employed as him by DEFENDANTS did not cross state lines and  
25 delivered products entirely within California's boundaries.

26 10. Plaintiffs were and are the victim of the policies, practices and customs of  
27 DEFENDANTS complained of in this action in ways that have deprived him of the rights  
28

1 guaranteed to him by California Labor Code §§ 201-204, 226, 227.3 and California Business and  
 2 Professions Code §17200, et seq., (Unfair Practices Act). Plaintiffs were and are the victims of  
 3 a policy(ies), practice(s) and/or custom(s), that automatically and improperly cut regular time  
 4 wages of Plaintiffs and the class members and failed to pay all regular time wages to Plaintiffs  
 5 and the class members, which policy(ies), practice(s) and/or custom(s) further served to deny  
 6 Plaintiffs all regular time wages and vacation wages on termination and failed to provide  
 7 accurate paycheck paystubs, all in violation of California Labor Code §§ 201-204, 226, 227.3  
 8 and California Business and Professions Code §17200, et seq., (Unfair Practices Act).

9 11. Plaintiffs are informed and believe and based thereon allege Defendants were and  
 10 are corporations doing business in the State of California selling delivery services to the public.

11 12. Plaintiffs are informed and believe and thereon allege that at all times herein  
 12 mentioned DEFENDANTS and DOES 1 through 20, are and were corporations, business  
 13 entities, individuals, and partnerships, licensed to do business and actually doing business in the  
 14 State of California.

15 13. As such, and based upon all the facts and circumstances incident to  
 16 DEFENDANTS' business in California, DEFENDANTS are subject to California Labor Code  
 17 §§ 201-204, 226, 227.3, and California Business and Professions Code § 17200, et seq., (Unfair  
 18 Practices Act).

19 14. Plaintiffs do not know the true names or capacities, whether individual, partner or  
 20 corporate, of the DEFENDANTS sued herein as DOES 1 through 20, inclusive, and for that  
 21 reason, said DEFENDANTS are sued under such fictitious names, and Plaintiffs pray for leave to  
 22 amend this complaint when the true names and capacities are known. Plaintiffs are informed and  
 23 believe and thereon allege that each of said fictitious DEFENDANTS was responsible in some  
 24 way for the matters alleged herein and proximately caused Plaintiff and members of the general  
 25 public and class to be subject to the illegal employment practices, wrongs and injuries  
 26 complained of herein.

27 15. At all times herein mentioned, each of said DEFENDANTS participated in the  
 28



1 doing of the acts hereinafter alleged to have been done by the named DEFENDANTS; and  
 2 furthermore, the DEFENDANTS, and each of them, were the agents, servants and employees of  
 3 each of the other DEFENDANTS, as well as the agents of all DEFENDANTS, and at all times  
 4 herein mentioned, were acting within the course and scope of said agency and employment.

5 16. Plaintiffs are informed and believe and based thereon allege that at all times  
 6 material hereto, each of the DEFENDANTS named herein was the agent, employee, alter ego  
 7 and/or joint venturer of, or working in concert with each of the other co-DEFENDANTS and was  
 8 acting within the course and scope of such agency, employment, joint venture, or concerted  
 9 activity. To the extent said acts, conduct, and omissions were perpetrated by certain  
 10 DEFENDANTS, each of the remaining DEFENDANTS confirmed and ratified said acts,  
 11 conduct, and omissions of the acting DEFENDANTS.

12 17. At all times herein mentioned, DEFENDANTS, and each of them, were members  
 13 of, and engaged in, a joint venture, partnership and common enterprise, and acting within the  
 14 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

15 18. At all times herein mentioned, the acts and omissions of various DEFENDANTS,  
 16 and each of them, concurred and contributed to the various acts and omissions of each and all of  
 17 the other DEFENDANTS in proximately causing the injuries and damages as herein alleged. At  
 18 all times herein mentioned, DEFENDANTS, and each of them, ratified each and every act or  
 19 omission complained of herein. At all times herein mentioned, the DEFENDANTS, and each of  
 20 them, aided and abetted the acts and omissions of each and all of the other DEFENDANTS in  
 21 proximately causing the damages as herein alleged.

### 22 CLASS ACTION ALLEGATIONS

23  
 24 19. **Definition:** The named individual Plaintiffs bring this action on behalf of  
 25 themselves and the class pursuant to California Code of Civil Procedure § 382. The Classes  
 26 consist of the following:

- 27 (1) All DEFENDANTS' past and present non-union LTL or "less than  
 28 truck load" drivers employed by DEFENDANTS in California during

Class one  
LTL deduction  
class

the period from June 23, 2004 to the present whose timesheets reflect more than 6 hours of work during at least one day and who were automatically deducted ½ hour of wage for days that they worked more than 6 hours in a day. This class specifically excludes all "linehaul" truck drivers of DEFENDANTS and specifically excludes all union workers.

Class two  
LTL WTP  
class.

(2) All DEFENDANTS' past and present non-union LTL or "less than truck load" drivers employed by DEFENDANTS in California during the period from June 23, 2004 to the present whose records show that they were not paid out all vested vacation wages, including all vested personal days, at the end of their employment. This class specifically excludes all "linehaul" truck drivers of DEFENDANTS and specifically excludes all union workers.

20. **Numerosity:** The members of the class are so numerous that joinder of all members would be impractical, if not impossible. Plaintiffs allege that there are more than 200 current and former Class Members. The identity of the members of the class is readily ascertainable by review of DEFENDANTS' records, including payroll records. Plaintiffs are informed and believe and based thereon allege that DEFENDANTS (a) failed to pay all regular time wages and vacation wages earned by Plaintiffs and the class members, (b) failed to furnish and/or keep accurate payroll records in violation of Labor Code § 226 of Plaintiffs and the class, and (c) engaged in Unfair Business Practices, all in violation of IWC Wage Order No 4-2001.

21. **Adequacy of Representation:** The named Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the class and individual Plaintiffs. Plaintiffs' attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California courts.

1           22. DEFENDANTS uniformly administered a corporate policy, practice of (a) failing  
2 to pay to Plaintiffs all regular time wages and vacation wages earned by Plaintiffs and the class  
3 members, (b) failing to furnish and/or keep accurate payroll records of Plaintiffs and the class in  
4 violation of Labor Code § 226, and (c) engaging in Unfair Business Practices, all in violation of  
5 IWC Wage Order No 4-2001.

6           23. Plaintiffs are informed and believe and based thereon allege that DEFENDANTS,  
7 in violation of California Labor Code §§ 201 to 204, and 227.3, respectfully, had a consistent and  
8 uniform policy, practice of willfully failing to comply with Labor Code § 203. Plaintiffs and  
9 other members of the class did not secret or absent themselves from DEFENDANTS, nor refuse  
10 to accept the earned and unpaid wages from DEFENDANTS. Accordingly, DEFENDANTS are  
11 liable for waiting time compensation for the unpaid wages to separated employees pursuant to  
12 California Labor Code § 203.

13           24. **Common Question of Law and Fact:** There are predominant common questions  
14 of law and fact and a community of interest amongst Plaintiffs and the claims of the class  
15 concerning DEFENDANTS' (a) failure to pay to Plaintiffs and the class members all regular  
16 time wages and vacation wages earned, (b) failure to furnish and/or keep accurate payroll records  
17 of Plaintiff and the class in violation of Labor Code § 226 by failing to state the accurate gross  
18 wages earned, total hours worked by the employee, net wages earned, and (c) engagement in  
19 Unfair Business Practices, all in violation of IWC Wage Order No 4-2001.  
20

21           25. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of  
22 the class. Plaintiffs are members of the Classes and are owed wages and have suffered the  
23 alleged violations of California Labor Code §§ 201-204, 226, 227.3, and IWC Wage Order No.  
24 4-2001, by DEFENDANTS' (a) failure to pay to Plaintiffs and the class all regular time wages  
25 and vacation wages earned, (b) failure to furnish and/or keep accurate payroll records of  
26 Plaintiffs and the class in violation of Labor Code § 226 by failing to state the accurate gross  
27 wages earned, total hours worked by the employee, net wages earned, and (c) engagement in  
28 Unfair Business Practices, all in violation of IWC Wage Order No 4-2001.

1           26.    The California Labor Code and upon which Plaintiffs base their claims are  
 2 broadly remedial in nature. These laws and labor standards serve an important public interest in  
 3 establishing minimum working conditions and standards in California. These laws and labor  
 4 standards protect the average working employee from exploitation by employers who may seek  
 5 to take advantage of superior economic and bargaining power in setting onerous terms and  
 6 conditions of employment.

7           27.    The nature of this action and the format of laws available to Plaintiffs and  
 8 members of the class identified herein make the class action format a particularly efficient and  
 9 appropriate procedure to redress the wrongs alleged herein. If each employee were required to  
 10 file an individual lawsuit, the corporate DEFENDANTS would necessarily gain an  
 11 unconscionable advantage since it would be able to exploit and overwhelm the limited resources  
 12 of each individual plaintiff with their vastly superior financial and legal resources. Requiring  
 13 each class member to pursue an individual remedy would also discourage the assertion of  
 14 lawful claims by employees who would be disinclined to file an action against their former  
 15 and/or current employer for real and justifiable fear of retaliation and permanent damage to their  
 16 careers at subsequent employment.

17           28.    The prosecution of separate actions by the individual class members, even if  
 18 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect  
 19 to individual class members against the DEFENDANTS and which would establish potentially  
 20 incompatible standards of conduct for the DEFENDANTS, and/or (b) adjudications with respect  
 21 to individual class members which would, as a practical matter, be dispositive of the interest of  
 22 the other class members not parties to the adjudications or which would substantially impair or  
 23 impede the ability of the class members to protect their interests. Further, the claims of the  
 24 individual members of the class are not sufficiently large to warrant vigorous individual  
 25 prosecution considering all of the concomitant costs and expenses.

26           29.    Such a pattern, practice and uniform administration of corporate policy regarding  
 27 illegal employee compensation described herein is unlawful and creates an entitlement to  
 28

30. Proof of common business practices or factual patterns, which the named Plaintiffs experienced and are representative of, will establish the right of each of the members of the Plaintiff class to recovery on the causes of action alleged herein.

31. The Plaintiff class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by DEFENDANTS. The Plaintiff class is commonly entitled to restitution of those funds being improperly withheld by DEFENDANTS. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

**FIRST CAUSE OF ACTION**

**VIOLATION OF LABOR CODE §§ 201 - 204**

(AGAINST ALL DEFENDANTS BY PLAINTIFFS)

32. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 31 as though fully set for herein.

33. At all times relevant herein, DEFENDANTS were required to pay their non-exempt hourly employees all regular time wages for all hours worked and also failed to pay final regular time wages owed in a timely fashion at the end of employment pursuant to California Labor Code § 201-204.

34. As a pattern and practice, DEFENDANTS regularly failed to pay Plaintiffs and class members their regular time wages pursuant to Labor Code §§ 201 to 204 by automatically and uniformly as a matter of corporate policy deducting ½ hours of time for each workday and accordingly owe wages for such improper deductions and also owe waiting time penalties pursuant to Labor Code § 203.

35. The conduct of DEFENDANTS and their agents and employees as described

◆



herein was willfully done in violation of Plaintiffs' and class members' rights, and done by managerial employees of DEFENDANTS.

36. Plaintiffs are informed and believe and based thereon allege DEFENDANTS' willful failure to pay all regular time wages due and owing them and failure to pay all regular time wages owed upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiffs and other members of the class who have separated from employment are entitled to all the regular time wages that they are owed and to compensation pursuant to Labor Code § 203.

### SECOND CAUSE OF ACTION

#### VIOLATION OF LABOR CODE § 227.3

#### (AGAINST ALL DEFENDANTS BY PLAINTIFFS)

*Pay vacation on  
Termination  
WTP*

37. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 36 as though fully set for herein.

38. This cause of action is brought pursuant to Labor Code § 227.3 which prohibits employers from forfeiting the vested vacation wages of their employees.

39. Plaintiffs had unused vested vacation wages, including vested personal vacation days, that were not paid out to them in a timely fashion at the end of their employment in violation of Labor Code § 227.3.

40. As a matter of uniform corporate policy and procedure and practices DEFENDANTS violated Labor Code § 227.3 by failing to pay Plaintiffs and members of the class all vested vacation wages, including all vested personal vacation days, at the end of their employment. The uniform policy of not paying Plaintiff and members of the class all vested vacation wages, including all vested personal days, at the end of their employment caused a forfeiture of vested vacation wages in violation of Labor Code § 227.3.

41. The conduct of DEFENDANTS and their agents and employees as described herein was willful and was done in conscious disregard of Plaintiffs' and class

1 members' rights, and done by managerial employees of DEFENDANTS and supports an  
 2 award of up to 30 days of pay, under Labor Code § 203, as penalties for Plaintiffs and  
 3 each former employee of DEFENDANTS who were not paid out all vested vacation  
 4 wages.

5 42. Such a pattern, practice and uniform administration of corporate policy  
 6 regarding illegal employee compensation as described herein is unlawful and creates an  
 7 entitlement to recovery by Plaintiff in a civil action for damages and wages owed and for  
 8 costs and attorney's fees.

### 9 THIRD CAUSE OF ACTION

#### 10 FOR VIOLATION OF LABOR CODE § 226 REGARDING RECORD KEEPING 11 (AGAINST ALL DEFENDANTS BY PLAINTIFFS)

12 43. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 42 as  
 13 though fully set for herein.

14 44. DEFENDANTS failed in their affirmative obligation to furnish and keep accurate  
 15 records regarding the wages earned, net wages earned, and total amount of compensation of their  
 16 California employees in pay periods. DEFENDANTS, as a matter of policy and practice, did not  
 17 maintain accurate records all in violation of Labor Code § 226.

18 45. As a matter of policy and practice, and in knowing and willful and intentional  
 19 violation of Labor Code § 226, DEFENDANTS automatically deducted ½ hour of wages for  
 20 each workday.

21 46. Such a pattern, practice and uniform administration of corporate policy as  
 22 described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the class  
 23 identified herein, in a civil action, for all damages, including regular time wages owed, or  
 24 penalties pursuant to Labor Code § 226, including interest thereon, attorney's fees, and costs of  
 25 suit according to the mandate of California Labor Code § 226.

26 47. DEFENDANTS' wrongful and illegal conduct in failing to accurately record the  
 27 hours worked in accordance with Labor Code § 226 despite the clear legal obligation to do so,  
 28



1 unless and until enjoined and restrained by order of this court, will cause great and irreparable  
 2 injury to Plaintiffs and all members of the class in that the DEFENDANTS will continue to  
 3 violate these California laws, represented by labor statutes, unless specifically ordered to comply  
 4 with same. This expectation of future violations will require current and future employees to  
 5 repeatedly and continuously seek legal redress in order to gain compensation to which they are  
 6 entitled under California law. Plaintiffs have no other adequate remedy at law to insure future  
 7 compliance with the California labor laws and wage orders alleged to have been violated herein.

#### 8 **FOURTH CAUSE OF ACTION**

#### 9 **FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.**

#### 10 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS)**

11 48. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 47 as  
 12 though fully set for herein.

13 49. DEFENDANTS, and each of them, have engaged and continue to engage in unfair  
 14 and unlawful business practices in California by practicing, employing and utilizing the  
 15 employment practices outlined above, include, to wit, by failing to (a) pay Plaintiff and the class  
 16 all regular time wages owed and (b) pay all vacation wages owed.

17 50. DEFENDANTS' utilization of such unfair and unlawful business practices  
 18 constitutes unfair, unlawful competition and provides an unfair advantage over DEFENDANTS'  
 19 competitors.

20 51. Plaintiffs seek, on their own behalf and on behalf of other members of the class  
 21 similarly situated full restitution of regular time wages owed, as necessary and according to  
 22 proof, to restore any and all regular time wages withheld, acquired and/or converted by the  
 23 DEFENDANTS by means of the unfair practices complained of herein.

24 52. Plaintiffs seek, on their own behalf and on behalf of other members of the class  
 25 similarly situated, an injunction to prohibit DEFENDANTS from continuing to engage in the  
 26 unfair business practices complained of herein.

27 53. The acts complained of herein for Plaintiffs and the class members occurred  
 28

1 within the last four years preceding the filing of the complaint in this action.

2 54. Plaintiffs are informed and believe and on that basis allege that at all times herein  
3 mentioned DEFENDANTS have engaged in unlawful, deceptive and unfair business practices,  
4 as proscribed by California Business and Professions Code § 17200 et seq., including those set  
5 forth herein above thereby depriving Plaintiffs and other members of the class the minimum  
6 working condition standards and conditions due to them under the California laws and Industrial  
7 Welfare Commission wage orders as specifically described therein.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for judgment for themselves and all others on whose  
10 behalf this suit is brought against DEFENDANTS, jointly and severally, as follows:

- 11 1. For an order certifying the proposed class;
- 12 2. For an order appointing Plaintiffs as the representatives of the class;
- 13 3. For an order appointing Counsel for Plaintiffs as class counsel;
- 14 4. Upon the First Cause of Action, for consequential damages according to proof and for  
15 waiting time penalties according to proof pursuant to California Labor Code § 203 and  
16 for costs, interest, and attorneys' fees;
- 17 5. Upon the Second Cause of Action, for all wages, damages, and/or penalties according to  
18 proof pursuant to California Labor Code § 227.3;
- 19 6. Upon the Third Cause of Action, for all wages, damages, and/or penalties according to  
20 proof pursuant to California Labor Code § 226; *No request for fees*
- 21 7. Upon the Fourth Cause of Action, for restitution to Plaintiffs and the class members all  
22 funds unlawfully acquired by DEFENDANTS by means of any acts or practices  
23 declared by this Court to be in violation of Business and Professions Code § 17200 et  
24 seq., for an injunction to prohibit DEFENDANTS to engage in the unfair business  
25 practices complained of herein, for an injunction requiring DEFENDANTS to give  
26 notice to persons to whom restitution is owing of the means by which to file for  
27 restitution;  
28

1 8. On all causes of action for attorneys fees and costs and interest as provided by California  
2 Labor Code §§ 201-204, 218.5, 218.6, 226, 227.3, and Code of Civil Procedure § 1021.5  
3 and for such other and further relief the Court may deem just and proper.

4  
5 DATED: June 23, 2008

LAW OFFICES OF PETER M. HART

6 By:   
7 Peter M. Hart, Esq.  
8 Attorney for Plaintiffs and the class

9 DEMAND FOR JURY TRIAL

10 Plaintiffs, for themselves and the class, hereby demand a jury trial as provided  
11 by California law.

12 DATED: June 23 2008

LAW OFFICES OF PETER M. HART

13  
14 By:   
15 Peter M. Hart  
16 Attorney for Plaintiffs and the class  
17  
18  
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20  
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**PROOF OF SERVICE BY PERSONAL DELIVERY**

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Nationwide Legal, Inc. 316 West 2nd Street, Suite 705, Los Angeles, CA 90012. On July 25, 2008, I personally served:

**NOTICE OF REMOVAL OF CIVIL ACTION**

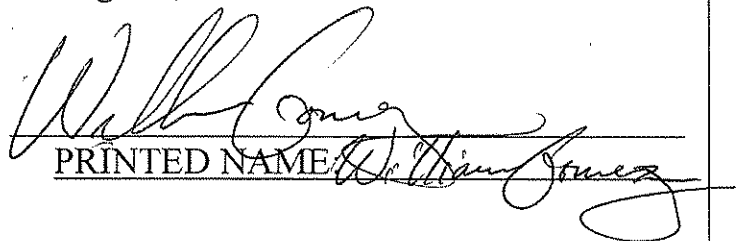
by delivering copies thereof to:

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Executed on July 25, 2008, at Los Angeles, California.

  
PRINTED NAME William Jones